IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.112 OF 2007

IN

NOTICE OF MOTION NO.320 OF 2006

IN

NOTICE OF MOTION NO.1974 OF 2006

IN

SUMMARY SUIT NO.23 OF 2006

Nitin Kumar Didwania .... Appellant

Vs.

M/s. Transgene Bio-tek
Limited & Anr. .... Respondents

Sarvasri Chirag Balsara with Vivek Kantawala i/b M/s. Vivek Kantawala & Co. for the Appellant.

Sarvasri S.A. Purohit with H.S. Khokawala i/b M/s. Nankani & Associates for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
Dr. D.Y. CHANDRACHUD, JJ.

DATED: FEBRUARY 26, 2007

P.C:

1. Heard. The present appeal arises from the order dated 5-2-2007 passed in Notice of Motion Nos.1974 and 320 of 2006 in Summary Suit No.23 of 2006. By the impugned order, the notice of motion taken out by the appellant for grant of attachment before judgment and in the alternative for temporary injunction has been discharged, while the notice of motion taken out by the respondents for vacating the ad-interim relief granted by the learned single Judge has been allowed.

2. The learned single Judge, in the absence of any material prima facie disclosing the case of intention on the part of the respondents to dispose of the property in question in order to defeat the execution of the decree that may be passed in favour of the appellant, has refused to grant the relief of attachment before judgment and also has rejected the prayer for grant of temporary injunction in the absence of any prima facie case being made out for that purpose.

3. The entire basis on which the relief of attachment before judgment was prayed for was the letter dated 3-2-2006 stated to have been written by one of the dealers in shares and addressed to the appellant. Undisputedly, the said letter was invited by the appellant. However, the letter nowhere discloses any source of information based on which the allegation is

made that the respondents seem to be looking for a deal or transaction for sale of the property in question. Besides, the allegation is in the nature that the buyers seem to be looking for such a deal or transaction. Neither the letter nor any other material on record discloses any source of information as regards the allegation made by the appellant against the respondents about the likelihood of disposal of the property in question.

4. The law on the point that question of grant of order in the nature of attachment before judgment can arise only on prima facie material being placed on record which could satisfy the Court that such an order is warranted, is well-settled. In the absence of facts which could reveal the intention on the part of the respondents to dispose of the property in question in order to defeat the execution of the decree which may be passed against him/her, question of grant of any such relief does not arise.

5. It is not mere filing of the suit for recovery of money, and the amount being large, that would justify the grant of such a relief. The necessary ingredients of Rule 5 of Order 38 of the C.P.C. are to be prima facie satisfied in order to avail such relief during the pendency of the suit. Even for the purpose of exercise

of power under Section 151 of the C.P.C., there must be exceptional case made out for such an exercise and in the absence thereof, question of exercise of those powers also does not arise.

6. In the case in hand, neither any such exceptional case is made out nor the necessary facts are placed on record which could reveal the alleged intention on the part of the respondent. Being so, no fault can be found with the impugned order. The learned single Judge on proper analysis of the materials on record has taken the view that the materials do not warrant either order in the nature of attachment before judgment nor grant of any interim injunction. The view being possible one, on the basis of assessment of the materials on record, it does not warrant interference in appeal. In case of discretionary relief, merely because different view may be possible on assessment of the same material, that would not by itself be a justification for interference in the impugned order in appeal.

7. In the circumstances, therefore, there being no case made out for interference in the impugned order, the appeal fails and is rejected.

8. At this stage, the learned Advocate for the appellant prays for continuation of the status quo.

Question of grant of continuation of status quo does not arise. The status quo was not granted by any specific order of this Court but it was a concession made in that regard by the learned Advocate for the respondents in view of the fact that the copy of the impugned order was not then available and in fact that was recorded on 6-2-2007 and further reiterated on 12-2-2007. Even otherwise, the learned single Judge, after passing of the impugned order, had rejected the request for stay of the order. As there is no case made out for grant of status quo or for insistence for the statement made on behalf of the respondents being continued, the request for status quo is rejected.

(Dr.D.Y.Chandrachud, J.) (R.M.S.Khandeparkar, J.)

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